

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

717H0001

SENATE BILL NO. 125

Introduced by: Senators Apa, de Hueck, Drake, Duxbury, Koskan, McCracken, and Symens
and Representatives Teupel, Frost, Hennies (Thomas), Jensen, Lange,
Madsen, Napoli, Rhoden, Slaughter, and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal
2 communications system, wireless, and cellular telecommunications companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (4) "Station," a subscriber service address located in this state with a distinct call number
10 designation or distinct extension number designation. If this is not a defined location,
11 the term, station, means the location of the primary user of telecommunications
12 equipment as determined by the telephone number, authorization code, or billing
13 address;

14 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,



1 receiver, or municipality providing any telecommunications service as defined in
2 section 2 of this Act;

3 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

4 Section 2. The term, telecommunications service, as used in this Act, means personal
5 communications services, wireless local loop services, fixed wireless services, and cellular
6 services that provide two-way communication. The term, telecommunications service, does not
7 include the provision of terminal equipment used to originate or terminate such service. The
8 term, telecommunications service, does not include specialized mobile radio service, private
9 mobile radio service, one-way cable television service, or two-way cable system subscriber
10 interaction that may be required for the selection of video or other programing services.

11 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a
12 telecommunications company from the sale at retail of intrastate and interstate
13 telecommunications services. Sale at retail does not include special access or toll-free incoming
14 calls or the sale of any telecommunications service by a telecommunications company to another
15 telecommunications company if the service is resold or becomes a component part of the sale by
16 the second telecommunications company. Any hospital, hotel, motel, or place that provides
17 temporary accommodations selling telecommunications services to its patients or guests is not
18 a telecommunications company for the purposes of this Act.

19 Section 4. The term, interstate telecommunication service, as used in this Act, means any
20 telecommunications service that originates or terminates in this state and is billed to a station in
21 this state.

22 Section 5. There is hereby imposed a tax of four percent on the gross receipts of any
23 telecommunications company from the sale at retail of any telecommunications service.

24 Section 6. There is created in the state treasury the telecommunications gross receipts tax

1 fund. The secretary shall deposit any revenue collected from the tax imposed by section 5 of this
2 Act into this fund.

3 Section 7. The secretary shall transfer the revenue in the telecommunications gross receipts
4 tax fund in the following manner:

5 (1) Forty percent shall be deposited in the property tax reduction fund. Any revenue
6 deposited in the property tax reduction fund pursuant to this section shall be dedicated
7 to increasing the funds to each school district based on its share of the statewide
8 average daily membership as defined in subdivision 13-13-10.1(1); and

9 (2) Sixty percent shall be deposited in the county telecommunications gross receipts fund
10 which is hereby created.

11 Section 8. The secretary shall distribute to each county an amount equal to one-half of the
12 money deposited in county telecommunications gross receipts fund times the ratio of the
13 assessed valuation of the county to the total assessed valuation of all counties plus one-half of
14 the money deposited in county telecommunications gross receipts fund times the ratio of
15 population of the county to the total population of all counties. The secretary shall base the
16 allocation of money on the most recent assessed valuations as published by the Department of
17 Revenue and the most recent decennial census of the United States Department of Commerce,
18 Bureau of the Census. The secretary shall make distributions from the county
19 telecommunications gross receipts fund each March, June, September, and December. The
20 secretary shall approve vouchers and the state auditor shall draw warrants to pay each county
21 its share of the distribution.

22 Section 9. Any telecommunications company engaging in a business in this state whose gross
23 receipts from telecommunications services are subject to the telecommunications gross receipts
24 tax shall file with the department, an application for a telecommunications gross receipts tax

1 license. An application for a license shall be made upon a form prescribed by the secretary and
2 shall set forth the name under which the applicant transacts or intends to transact business, the
3 location of the place of business, and such other information as the secretary may require. The
4 application shall be signed by the owner, if a natural person; in the case of an association or
5 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
6 by an executive officer thereof or some person specifically authorized by the corporation or the
7 municipality to sign the application, to which shall be attached the written evidence of the
8 person's authority.

9 Section 10. The secretary shall grant and issue to each applicant a telecommunications gross
10 receipts tax license. A license is not assignable and is valid only for the telecommunications
11 company to which it was issued. Any license issued is valid and effective without further payment
12 of fees until canceled or revoked.

13 Section 11. The secretary may refuse to issue a telecommunications gross receipts tax license
14 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
15 The secretary may also require an applicant to furnish to the state a bond, or other adequate
16 security, as security for payment of any gross receipts tax that may become due, or require a
17 bond or security as a condition precedent to remaining in business as a telecommunications
18 company.

19 Section 12. Any person who is the holder of a telecommunications gross receipts tax license
20 or is a telecommunications company whose receipts are subject to telecommunications gross
21 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
22 month following each monthly period. If the telecommunications company files the return and
23 remits the tax by electronic transfer to the state, the telecommunications company shall file the
24 return and remit the tax on or before the last day of the month following each monthly period.

1 The secretary may grant an extension of not more than five days for filing a return and
2 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
3 a return or remittance is not made on time.

4 Section 13. Any telecommunications company that is the holder of a telecommunications
5 gross receipts tax license and that has failed to file a return, or that has filed a return and has
6 failed to pay the tax due the state under this law on or before the fifteenth of the second month
7 following the reporting period authorized, may no longer continue as a telecommunications
8 company and its telecommunications gross receipts tax license shall be revoked and canceled.

9 Section 14. Any appeal from a decision of the secretary in a contested case shall be taken in
10 accordance with chapter 1-26.

11 Section 15. The secretary may not reinstate the license of a telecommunications company,
12 which has been canceled or revoked as provided in this Act, until all the telecommunications
13 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
14 may also require the telecommunications company to file a bond as security for any future
15 liability.

16 Section 16. Any refund or allowance made by any telecommunication service or any amount
17 written off the books of a telecommunications company reporting financial information on an
18 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
19 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
20 is subject to the telecommunications gross receipts tax and shall be reported to the department
21 in the month of collection.

22 Section 17. Any telecommunications company subject to the telecommunications gross
23 receipts tax shall keep records of all receipts and telecommunications service sales. The records
24 are, at all times during business hours of the day, subject to inspection by the department to

determine the amount of tax due. The records shall be preserved for a period of three years unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

Section 18. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- (1) Telecommunications tax licensing, including bonding and filing license applications;
- (2) The filing of returns and payment of the tax;
- (3) Determining the application of the telecommunications tax and exemptions;
- (4) Taxpayer record-keeping requirements; and
- (5) Determining auditing methods.

Section 19. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the telecommunications gross receipts tax is guilty of a Class 6 felony;
- (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records required by this Act or refuses to exhibit these records to the department for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this Act within thirty days from the date the return is due is guilty of a Class 1 misdemeanor;
- (5) Engages in business as a telecommunications company under this Act without obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;
- (6) Engages in business as a telecommunications company under this Act after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;
- (7) Willfully violates any rule of the secretary for the administration and enforcement of

1 the provisions of this Act is guilty of a Class 1 misdemeanor;

2 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in
3 any twelve-month period is guilty of a Class 6 felony; or

4 (9) Engages in business as a telecommunications company under this Act without
5 obtaining a telecommunications gross receipts tax license after having been notified
6 in writing by the secretary that the telecommunications company is subject to the
7 provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of
8 this subdivision if the telecommunications company providing any telecommunications
9 service files an application for a telecommunications gross receipts tax license and
10 meets all lawful prerequisites for obtaining such license within three days from receipt
11 of written notice from the secretary.

12 For purposes of this section, the term, telecommunications company, includes corporate
13 officers having control, supervision of, or charged with the responsibility for making tax returns
14 or payments pursuant to this Act.

15 Section 20. If a corporation subject to the gross receipts tax under this Act fails for any
16 reason to file the required returns or to pay the tax due, any of its officers having control, or
17 supervision of, or charged with the responsibility for making such returns and payments are
18 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
19 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
20 for such a liability may be assessed and collected as provided by law.

21 If any responsible corporate officer elects not to be personally liable for the failure to file the
22 required returns or to pay the tax due, the corporation shall provide the department with a surety
23 bond or certificate of deposit as security for payment of any tax that may become due. The bond
24 or certificate of deposit provided for in this section shall be in an amount equal to the estimated

1 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
2 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
3 §§ 9-14-6 and 9-14-6.1.

4 Section 21. Any real and personal property owned by a telecommunications company that
5 is used or intended for use in furnishing and providing telecommunication services is exempt
6 from real and personal property taxes levied by the state, counties, municipalities, townships, or
7 other political subdivisions of the state.

8 Section 22. That § 10-59-1 be amended to read as follows:

9 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
10 or fees imposed by this Act, chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A,
11 10-46B, 10-47B, 10-52, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and
12 §§ 22-25-48, 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.